

Message Text

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FM SECSTATE WASHDC

TO AMEMBASSY OTTAWA

C O N F I D E N T I A L STATE 042770

E.O. 11652: GDS

TAGS: ENRG

SUBJECT: US TIMETABLE FOR MACKENZIE VALLEY GAS PIPELINE

REF: OTTAWA 8692

1. PRECISE TIMETABLE OF CONGRESSIONAL ACTIONS AFFECTING
CONSIDERATION OF MACKENZIE VALLEY PIPELINE IS DIFFICULT
TO ESTIMATE. SEVERAL BILLS HAVE BEEN INTRODUCED IN
BOTH SENATE AND HOUSE TO PROVIDE LEGISLATIVE DETERMINATION
OF PIPELINE ROUTE OR TO EXPEDITE AND STREAMLINE REGULATORY
AGENCY PROCEDURES FOR DETERMINING PIPELINE ROUTE.

2. SENATOR STEVENS OF ALASKA HAS PROPOSED (S. 2778)

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THAT CONGRESS REQUIRE ANY DELIVERY SYSTEM FOR PRUDHOE

BAY NATURAL GAS TO CONSIST SOLELY OF A PIPELINE WITHIN THE STATE OF ALASKA. SENATOR HOLLINGS (FOR SENATOR GRAVEL OF ALASKA) HAS INTRODUCED A BILL (S. 2310) TO ESTABLISH A TIME LIMIT FOR FPC CERTIFICATION OF ROUTE (ORIGINALLY JUNE 30 LATER AMENDED TO DECEMBER 1), LIMIT JUDICIAL REVIEW OF THE ACT ITSELF AND STEAMLINE COMPLIANCE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969. SENATOR MONDALE OF MINNESTOA HAS INTRODUCED LEGISLATION IN THE SENATE WHICH DUPLICATES A BILL INTRODUCED BY CONGRESSMAN PHILIP RUPPE OF MICHIGAN (H.R. 11273) THE RUPPE-MONDALE LEGISLATION WOULD REQUIRE THE FEDERAL POWER COMMISSION (FPC) TO APPROVE THE CANADIAN ARCTIC

GAS PROJECT FOR A TRANS-CANADA PIPELINE AND LIMIT JUDICIAL REVIEW. IT IS UNCERTAIN WHETHER ANY BILL WILL PASS DURING THIS SHORT SESSION OF CONGRESS. BOTH ROUTES HAVE SUPPORTERS IN CONGRESS, MAINLY ON A REGIONAL BASIS, BUT NO CLEAR ESTIMATE OF THE RELATIVE STRENGTH OF THE TWO CAMPS CAN BE MADE AT THIS TIME ALTHOUGH MONDALE BILL HAD 28 CO-SPONSORS AT LAST COUNT INCLUDING MANSFIELD, HUMPHREY AND SCOTT.

3. THE ADMINISTRATION IS CONSIDERING NEED FOR LEGISLATION WHICH WOULD ESTABLISH A TIME LIMIT FOR REGULATORY AGENCY DECISION AND LIMIT JUDICIAL REVIEW AND LITIGATION FOR ENVIRONMENTAL REASONS. NO DECISION HAS BEEN MADE ON SUCH LEGISLATION AT THIS TIME.

4. CONGRESSIONAL HEARINGS: JOHN MELCHER, MONTANA, CHAIRMAN OF PUBLIC LANDS SUBCOMMITTEE OF HOUSE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS HELD HEARINGS ON DELIVERY SYSTEMS FOR ALASKAN NATURAL GAS ON OCTOBER 9, 1975. STATE, FPC, FEA AND INTERIOR WITNESSES TESTIFIED. SENATE COMMERCE AND INTERIOR AND INSULAR AFFAIRS COMMITTEES HELD JOINT OVERSIGHT HEARINGS ON FEBRUARY 17 ON THE ISSUE OF DELIVERY SYSTEMS FOR ALASKAN NATURAL GAS. STATE FEA, FPC, INTERIOR, TREASURY AND TRANSPORTATION TESTIFIED AND RESPONDED IN WRITING TO A DETAILED QUESTIONNAIRE. (SUMMARY OF FEBRUARY 17 HEARING BEING CABLED SEPARATELY PER EMBASSY REQUEST. AGENCIES' STATEMENTS AND RESPONSES CONFIDENTIAL

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TO SENATE QUESTIONNAIRE POUCHED.)

5. REGULATORY PROCEEDINGS-FEDERAL POWER COMMISSION: THE DIRECT CASES OF ARCTIC GAS AND EL PASO ALASKA HAVE BEEN COMPLETED AND WILL BE FOLLOWED BY ANSWERING AND REBUTTAL TESTIMONY. AT MELCHER HEARINGS, COMMISSIONER DON SMITH INDICATED FPC HEARINGS ON THE ENVIRONMENTAL IMPACT OF EACH PROJECT WOULD CONCLUDE THE HEARING PHASE

OF THE FPC PROCEEDINGS AND THE RECORD WOULD BE CLOSED IN APRIL 1976. SMITH SAID A FINAL DECISION BY THE COMMISSION COULD BE EXPECTED BY DECEMBER 1, 1976.

6. IN FPC STAFF'S OPINION, NEITHER OF THE PENDING APPLICATIONS CAN BE PERFECTED AS TO FINAL DESIGN, COST AND ECONOMICS OF DELIVERY FOR ALASKAN GAS SUPPLIES WITHOUT SOME INDICATION OF THE FINAL TERMS OF NATURAL GAS SALE. AT PRESENT, THERE ARE NO FINAL SALES CONTRACTS. NATURAL GAS CONTRACTS AWAIT DECISION BY THE STATE OF ALASKA ON THE UNITIZATION PROGRAM FOR THE PRUDHOE BAY OIL FIELD. IF SALES INFORMATION CAN BE SUPPLIED EXPEDITIOUSLY OR IF THE FPC DECIDES TO ACT WITHOUT THIS DATA, PERHAPS ISSUING A "CONDITIONAL" CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY, THE HEARINGS COULD BE CONCLUDED SOME TIME IN APRIL AFTER ANSWERING AND REBUTTAL TESTIMONY TO THE FPC STAFF'S FINAL ENVIRONMENTAL IMPACT STATEMENT. THE MATTER COULD THEN PROCEED TO BRIEFING AND ACTION ON THE PART OF THE ADMINISTRATIVE LAW JUDGE HEARING THE CASE WHO WOULD MAKE AN INITIAL DECISION AROUND SEPTEMBER 1. THE ADMINISTRATIVE LAW JUDGE'S DECISION WOULD BE FORWARDED TO THE COMMISSION.

7. FPC CHAIRMAN RICHARD DUNHAM REITERATED IN HIS FEBRUARY 17 SENATE TESTIMONY THAT A COMMISSION DECISION COULD BE FORTHCOMING BY DECEMBER 1, 1976. HOWEVER, HE CAUTIONED THAT TIMING OF A FINAL DECISION WOULD DEPEND TO A LARGE EXTENT ON WHETHER THE COMMISSION DECIDES TO CONDITIONALLY APPROVE AN APPLICATION IN THE ABSENCE OF GAS SALES CONTRACTS.

8. A FINAL DECISION BY DECEMBER 1 WOULD BY NO MEANS END THE MATTER. REGARDLESS OF THE FPC'S CHOICE, THE CONFIDENTIAL

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REJECTED APPLICANT IS LIKELY TO LITIGATE AS ARE ENVIRONMENTAL GROUPS THAT MAY BE DISSATISFIED WITH THE FPC'S DECISION. IF THE OIL PIPELINE EXPERIENCE IS ANY GUIDELINE, CONSTRUCTION START-UP COULD BE DELAYED FOR SEVERAL YEARS FOLLOWING A "FINAL" FPC DECISION. THIS FACTOR HAS LED THE ADMINISTRATION AND CONGRESS TO CONSIDER A LEGISLATIVE MANDATE LIMITING JUDICIAL REVIEW AND LITIGATION AS NOTED IN PARAGRAPH 3.

9. OTHER REGULATORY ACTIVITY: IN ADDITION TO FPC CERTIFICATION, THE SUCCESSFUL APPLICANT REQUIRES A PERMIT FROM THE SECRETARY OF THE INTERIOR FOR RIGHT-OF-WAY ACROSS FEDERAL LANDS. ARCTIC GAS CONSORTIUM HAS APPLIED FOR THIS PERMIT AND THE EL PASO ALASKA COMPANY HAS NOT. IT IS NOT EXPECTED THAT PERMIT WILL BE ISSUED THIS YEAR.

TRANS-ALASKA PIPELINE AUTHORIZATION ACT ALSO MANDATES THAT INTERIOR FIND THAT A PIPELINE PROJECT CROSSING FEDERAL LANDS IS TECHNICALLY AND FINANCIALLY VIABLE. PRECISE HANDLING OF THIS AUTHORITY, WHICH APPEARS SOMEWHAT DUPLICATIVE OF FPC PROCESS, HAS NOT BEEN WORKED OUT.

10. CONCERNING EMBASSY COMMENT PARA 4 REFTEL, US SUGGESTED TO SENIOR LEVEL EXTAFF AND EM&R OFFICIALS AT TIME OF PIPELINE TREATY AND OIL EXCHANGE DISCUSSIONS IN OTTAWA ON JUNE 19, 1975 THAT BOTH GOVERNMENTS COORDINATE THE PHASING AND TIMING OF MACKENZIE VALLEY PIPELINE DECISIONS TO FORESTALL PREMATURE FORECLOSURE OF THE JOINT PIPELINE OPTION FOR EITHER COUNTRY. THESE SUGGESTIONS WERE RECEIVED UNENTHUSIASTICALLY. CANADIAN OFFICIALS FELT COORDINATED ACTIONS MIGHT COMPLICATE THE DECISION PROCESS AND CREATE "VERY DELICATE POLITICAL PROBLEMS" IN CANADA. US RECEIVED INDICATIONS AT THAT TIME THAT NEB CERTIFICATION COULD BE SPEEDED UP IF THE CANADIAN GOVERNMENT SAW CLEAR NEED FOR URGENCY.

11. EMBASSY CORRECT IN ASSUMING CANADIAN GOVERNMENT FULLY AWARE OF US CONGRESSIONAL AND REGULATORY AGENCY ACTIONS THROUGH CANADIAN EMBASSY'S EFFORTS. DEPARTMENT CONCURS WITH EMBASSY ASSESSMENT (REFTEL) REGARDING LACK OF COMMUNICATION WITHIN GOC. HOWEVER, PMO'S VIEW OF CONFIDENTIAL

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CANADIAN DECISION TIMETABLE WOULD BE INTERESTING AND PMO- EMBASSY CHANNEL FOR FURTHER COMMUNICATION ON DECISION PHASING COULD PROVE USEFUL IN FUTURE. EAGLEBURGER

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